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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1977

## No. 77-1182

UNITED AIRLINES, INC.,
*Petitioner,*

vs.

KATHLEEN C. INDA,
*Respondent*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### OPINION BELOW

The judgment petitioner seeks reviewed was entered by the United States Court of Appeals for the Ninth Circuit and that opinion is reported as *Inda v. United Air Lines, Inc.*, 565 F.2d 554 (9th Cir. 1977) and attached as Appendix A to the petition (hereinafter "App. A").

The opinion of the District Court is reported at 405 F.Supp. 426 (N.D. Cal. 1975) and attached as Appendix B to the petition (hereinafter "App. B").

## JURISDICTION

Petitioner claims jurisdiction under 28 U.S.C. § 1254(1).

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## QUESTION PRESENTED

Is it necessary on the facts of this case to invoke the certiorari powers of this Court to provide further guidance on the 1972 Title VII amended filing period in light of *Electrical Workers v. Robbins and Meyers, Inc.*, 429 U.S. 229?

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## STATUTES INVOLVED

Section 706(d) of the Civil Rights Act of 1964, 78 Stat. 241, 260, 42 U.S.C. § 2000e-5(d), provided in part:

> "A charge . . . shall be filed within ninety days after the alleged unlawful employment practice occurred . . ."

That provision was amended and renumbered as Section 706(e) by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 105, 42 U.S.C. § 2000e-5(e), and states as follows:

> "A charge under this section shall be filed within one hundred and eighty days after the alleged unemployment practice occurred . . ."

Section 14 of the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 113, provides:

> "The amendment made by this Act to Section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter."



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## STATEMENT OF THE CASE

Respondent Kathleen C. Inda was a stewardess employed by petitioner United Air Lines, Inc. (hereinafter "United") until June 15, 1968 when she was forced to resign because of United's no-marriage rule. That rule required female, but not male, flight cabin attendants to be single and to resign immediately or be fired upon marriage.

Pursuant to this policy both Inda and her co-plaintiff below, Kathleen F. Moritz,[1] were advised by United supervisors to resign rather than force the company to fire them. The supervisors told them that if they resigned in compliance with the rule and it were ever abandoned, they would have preference in being re-employed as United stewardesses. If, however, Inda and Moritz forced the company to fire them, they would be ineligible for rehire in any position (Reporter's Transcript of December 17, 1974, hereinafter "RT" 6:6-21; 22:9-21; 36:1-8, and 13-16; 41:1-11; see also App. A, p. 3).

Both Inda and Moritz resigned in reliance upon these representations, and neither filed a discrimina-

[1]Kathleen F. Moritz resigned because of the no-marriage rule in March, 1968. Although the petition herein is limited to Inda, the Moritz decision is pertinent in as much as the representations and determined reliance involved therein were the same for both Inda and Moritz.

tion charge with the Equal Employment Opportunity Commission (hereinafter "EEOC"). Only those stewardesses who were actually fired because of marriage could file a union grievance under the terms of the collective bargaining agreement between United and the Air Line Pilots Association (hereinafter "ALPA"). Those who resigned in compliance with the rule could not grieve the policy (RT 13:18-21).

On November 7, 1968 United modified its no-marriage rule to permit stewardesses to continue in their jobs after marriage. Women were still required to be single to be hired initially for that job, however. Some former stewardesses—those who had been dishonest with the company and had been fired when their marriages were discovered—were given the opportunity to return to their jobs with no loss in seniority, but the new policy did not reinstate those stewardesses who had complied with company policy by openly disclosing their marriage plans and resigning.[2]

[2]The November 7, 1968 letter of agreement between United and the Air Line Pilots Association stated as follows:

"The company agrees that marriage will not disqualify a Stewardess from continuing in the employ of the Company as a Stewardess. . .

"All Stewardesses who have been terminated by the Company because of marriage and have filed a valid grievance protesting such policy, or who have filed as of this date a valid complaint before the Equal Employment Opportunity Commission or State Agencies, will be offered the opportunity to return to active Stewardess service. Such Stewardesses shall make application for reinstatement *with no loss of seniority* to the Director of Stewardess Service within thirty (30) days of receipt of such notification from the Company of such offer." (emphasis added)

App. B, pp. 18-19, Finding No. 9.



Within a week of the change in policy, both Inda and Moritz attempted to be rehired as United stewardesses. They sought and were refused even new-hire status because they were married (RT 8:25-10:11; 24:5-25:15; 32:6-33:5). Both immediately filed charges of sex discrimination with the EEOC. Inda's charge was filed on November 18, 1968, 156 days after her forced resignation.

The EEOC investigated the charges and in December, 1970 determined that the charges were probably true (App. B, pp. 19-20, Findings Nos. 14 and 18). In September of 1971 both Inda and Moritz were informed of that determination and of the Commission's intent to conciliate on their behalf (App. B, pp. 24 and 26, Findings Nos. 14 and 26). Conciliation failing, the EEOC notified them of their right to sue on October 16, 1972 and two days later this suit was filed alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

United's motion to dismiss the complaint because of untimely EEOC charges was denied and trial resulted in a judgment in favor of both plaintiffs on January 30, 1975. See App. B.

Appeal was taken to the Ninth Circuit which issued its opinion on November 28, 1977. See App. A. Inda's judgment was affirmed in its entirety. The Ninth Circuit held that Section 14 of the Equal Employment Opportunity Act of 1972 (hereinafter "1972 Act") made that Act's 180-day time period applicable to Inda's EEOC charge which was still pending with the Commission when Congress passed the Act.

Although Moritz's EEOC charge was also still pending on the date of enactment, she had not filed it within 180 days of her forced resignation. It was, however, filed within six days of United's refusal to re-employ her, which was held to be a separate discriminatory act. Both Moritz and Inda had resigned rather than be fired because of United's assurance of rehire preference if the no-marriage rule were abandoned. Since the exact opposite occurred, the Ninth Circuit stated:

> Under these circumstances equitable principles analogous to those of estoppel demand that United honor representations relied upon by plaintiffs to their detriment. Failure to do so renders the denial of re-employment an independent breach of duty, sharing with the original termination its nature as a discrimination on the basis of sex and thus a violation of the Act, as to which violation the EEOC charges were timely filed by Moritz.
>
> 565 F.2d at 562 (App. A, p. 13).

Moritz's judgment was ordered modified to reflect the November 1968 violation rather than the earlier date of forced resignation.

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## REASONS FOR DENYING CERTIORARI

### 1. THE NINTH CIRCUIT PROPERLY APPLIED THE 180-DAY PERIOD TO INDA'S EEOC CHARGE

The sole question urged herein for review was explicitly left unanswered by this Court in *Electrical Workers v. Robbins and Meyers, Inc.*, 429 U.S. 229,



243 n.17.[3] Resolution was not necessary to the disposition of that case. That opinion's careful analysis of the Congressional intent evidenced in the legislative history of the 1972 Act has, however, properly guided the few lower courts subsequently facing the issue.

Three such cases have arisen: the decision below; *Dickerson v. U.S. Steel Corp.*, 439 F.Supp. 55, 69, n.11 (E.D. Pa. 1977); and *Crook v. Penn Central Transportation Co.*, 427 F.Supp. 956 (N.D. Ill. 1977). All three decisions are in agreement. As stated by the court in *Crook, supra,* 427 F.Supp. at 959:

> "That the Court limited its holding to the facts before it is understandable. In our judgment, however, the Court's logic can be extended to cases such as the one at bar, where the charge was filed within 180 days of the alleged discriminatory event and was 'pending' before the Commission on March 24, 1972 even though the charge did not allege a discriminatory occurrence within 180 days of March 24, 1972. To find otherwise would place too much emphasis upon the fortuity of the timing of an alleged discriminatory practice rather than the specifically stated Congressional desire to extend the 180 day period to 'charges pending before the Commission on the date of the enactment of (the) Act.' Accordingly, we hold that plaintiff's charge . . . was timely."

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[3]That footnote reads as follows:

"Accordingly, we need not decide whether the enlarged limitations period also redounds to the benefit of persons who filed a charge more than 90, but less than 180, days from the date of the alleged "occurrence," where the 180 days had run prior to March 24, 1972."

The legislative history of the 1972 Act completely supports these decisions. The initial versions of the bills introduced in both the House and Senate provided that any amendments to Title VII would not apply to charges filed with the EEOC prior to the effective date of the Act.[4] Section 14 originated in an amendment by Senator Javits whose floor remarks indicated the broad reach of its intended effect: "this amendment would make whatever we do enact into law applicable to pending cases." 118 Cong. Rec. 4816 (1972).[5]

No legislative history supports a limitation on the plain language of Section 14. Nevertheless, United argues that this Court's decision in *United Air Lines, Inc. v. Evans,* 431 U.S. 553 (1977) precludes the application of the 1972 Act as intended by Congress.

Carolyn Evans was also forced to resign her job as a United stewardess because of the no-marriage rule. She resigned in February of 1968 but did not file an EEOC charge until five years later. She was new-hired in 1972 and in February of 1973 complained to the EEOC of United's refusal to credit her with the pre-1972 stewardess seniority she would have had if she had not been forced to resign.

Respondent submits that the *Evans* case is simply inapposite to the question United has raised for review herein. Evans had no charge pending with the EEOC when the 1972 Act was passed, and when she

[4]See H.R. 1746, 92nd Cong., 1st Sess. § 10 (1971); S. 2515, 92nd Cong., 1st Sess. § 13 (1971); H.R. Rep. No. 238, 92 Cong., 1st Sess. 32 (1971).

[5]Rep. No. 415, 92nd Cong., 1st Sess., 46, 72 (1971).



subsequently filed her charge considerably more than 180 days had elapsed since her forced resignation. She alleged no detrimental reliance on representations of hiring preferment which might have made the refusals of reinstatement independent violations of Title VII, and the 1973 charge was too late to challenge those refusals even had she so alleged.

United totally ignores the factual differences between Carolyn Evans and Kathleen Inda just as it ignores the factual similarities between Inda and Moritz and the Ninth Circuit's holding in Moritz, which it does not challenge (Petition, p. 3). Inda, along with Moritz, relied to her detriment on United's representations of preferential rehiring of stewardesses who resigned in compliance with company policy rather than be fired. United's failure to honor those representations when it changed its policy in November of 1968 thus constituted a separate violation of Inda's rights under Title VII. The EEOC charge filed by her within several days thereafter was clearly timely as to that Act and all but five months of the back-pay liability, of which United complains, occurred after that date.

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## 2. RESOLUTION OF THE QUESTION URGED FOR REVIEW BY THIS COURT IS UNNECESSARY

Inda was entitled to favored rehire treatment under the November 1968 change in policy. The exact opposite occurred: United re-employed only those stewardesses who had concealed their marriages and had been

fired upon discovery. Had Inda not followed the advice of her supervisors she would still be a United stewardess. If United had discovered her marriage and fired her she would have been eligible to file a union grievance, an option not available to those who complied with the rule and resigned. Had Inda filed such a grievance, she would have been reinstated with full seniority pursuant to the November 7, 1968 agreement. Had her five-month old marriage escaped discovery, that agreement would have also automatically entitled her to continue in her job.

Thus, whether or not this Court finds the 1972 Act's 180-day time period applicable to the earlier forced resignation, Inda is entitled to reinstatement by United and back-pay as of the date United wrongfully refused to re-employ her on November 18, 1968 (App. B, p. 19, Findings Nos. 11 and 12). Since United rehired the fired stewardesses "with no loss of seniority",[6] Inda's right to re-employment as of that date should also carry full seniority if the promise of favored rehire treatment is to be fulfilled.

The maximum benefit of this Court's efforts on review would be to reduce United's back-pay liability to Inda by $1,248.00.[7] Surely this Court's strained resources can be better spent.

[6]Had she been reinstated on November 18, 1968 Inda would have worked as a stewardess for the remaining 6½ weeks of 1968 and should have earned $838.00. In fact, she earned $487.00 during those weeks in her job as a clerk. United would thus be liable to Inda for at least $401.00 in 1968 back pay. (Computations based on Findings Nos. 10-13 at p. 3 of App. B.)

[7]See also the Section-by-Section analysis of the bill as reported from conference committee and considered by both Houses prior to their voting, which stated "that the amended provisions of Section 706 would apply to charges filed with the Commission prior to the effective date of this Act." 118 Cong. Rec. 7169, 7567 (1972), and that the limitation period should be construed "so as to give the aggrieved person the maximum benefit of the law." *Id.* at 7167, 7565.



It is most unlikely that the application of the 1972 Act's 180-day time period to EEOC charges filed prior to the passage of the Act will pose problems in future Title VII cases. Five years have now passed since its enactment and charges then pending with the Commission have in all probability been either successfully conciliated or litigated. Should the question arise, this Court has already given the lower courts ample guidance in *Electrical Workers, supra.* The decisions below since then have been in complete uniformity.

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## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated, March 20, 1978.

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*Kathleen C. Inda.*